No. 97-689

In The

Supreme Court of the United States

October Term, 1997

BONNIE L. GEISSAL as representative of the Estate of JAMES W. GEISSAL, deceased,

Petitioner,

vs.

MOORE MEDICAL CORP., GROUP BENEFIT PLAN OF MOORE MEDICAL CORP. and HERBERT WALKER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

The essential question in this case is whether an employer is obligated by the Comprehensive Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. § 1161, *et seq.* to provide continuation of a former employee's health insurance when that former employee, both pre and post employment termination, was covered under another group health plan which had no pre-existing condition provision, and there was no significant "gap" in coverage.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings in the United States Court of Appeals for the Eighth Circuit include:

1. Petitioner Bonnie L. Geissal, as representative of the Estate of James W. Geissal, deceased;

2. Moore Medical Corp., Respondent;

3. Group Benefit Plan Of Moore Medical Corp., Respondent;

4. Herbert Walker, Respondent.

Other than as noted, none of the parties has a parent company or nonwholly owned subsidiary involved in this litigation.

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD NOT GRANT PETITIONER'S PETITION FOR WRIT OF CERTIORARI BECAUSE THE EIGHTH CIRCUIT COURT OF APPEALS CORRECTLY DECIDED THE ISSUE, AND THE ISSUE IS NOT OF SUCH IMPORTANCE WARRANTING REVIEW BY THE UNITED STATES SUPREME COURT.

The Eighth Circuit in its well written and well considered opinion correctly determined the law on COBRA continuation coverage when there is pre-existing spousal coverage. COBRA continuation coverage need only be provided to a former employee when there is a significant gap between the employee's prior coverage and that afforded by the spouse's group health plan. Such clearly was the intent of Congress in enacting the 1989 amendments to the COBRA legislation.

The Eleventh Circuit in *National Companies Health Benefit Plan v. St. Joseph's Hospital, Inc.*, 929 F.2d 1558 (11th Cir. 1991), thoroughly addressed the statutory language of COBRA and the intent of Congress. In addressing the 1989 amendment, the court at page 1569 stated:

> This amendment, like the *Oakley* dicta, emphasizes the importance of the character of the coverage obtained by the beneficiary.
>
> Congress enacted COBRA because it was concerned about the fate of individuals who, after losing coverage under their employer's ERISA plan, had no (emphasis added) group health coverage at all.

Moreover, the Eighth Circuit's decision is consistent with the legislative history behind COBRA. As the trial court properly noted, a court is required to look to the plain language of the statute, give significance to the statute as a whole, and examine the purpose and intent. *Commissioner of Internal Revenue v. Engle*, 464 U.S. 206, 217 (1984); *See also In Re Graven*, 936 F.2d 378 (8th Cir. 1991) ("When interpreting a statute we look not only to the express language but also to the overall purpose of the act.")

Congress enacted the 1989 COBRA amendments to ERISA in response to

> reports of the growing number of Americans without **any** (emphasis added) health insurance coverage and the decreasing willingness of our Nation's hospitals to provide care to those who cannot afford to pay.

Brock v. Primedica, Inc. 904 F.2d 295 (5th Cir. 1990), citing H.R. Rep No. 241, 99th Cong., 2d Sess. 44, reprinted in 1986 U.S.C.C.A.N. 42, 579, 622. Thus, for petitioner to maintain that COBRA supports his attempt to obtain duplicative insurance coverage flies in the face of the Congressional purpose to help those without any coverage. As such, the Court must reject petitioner's strained interpretation.

See also Teweleit v. Hartford Life and Accident Insurance Company, 43 F.3d 1005 (5th Cir. 1995) where the court revisited the law on COBRA continuation coverage. After reviewing the reported cases to date, the court succinctly summarized the status of those cases:

> *Brock* and *National Co.* and, to a lesser extent, *Oakley* have voiced a common interpretive theme of COBRA coverage: its purpose is to eliminate gaps in

> insurance coverage that could accompany changes in or loss of employment. These statements are not just a theme, however, but the enacted will of Congress in language sufficiently clear to achieve its purpose.

Teweleit, supra, at page 1008.

It simply does not take a crystal ball to divine the intent of Congress in enacting COBRA. It wanted short term protection for employees without any or inadequate health insurance while not saddling employers with too great of a cost burden. *See National Co., supra* at pages 1569-1579. In fact, the 1989 amendment increased the situations where a group health plan could terminate COBRA continuation coverage. If Congress were not concerned about the cost burden on employers, it would not have given group health plans the ability to terminate coverage. The court in *Lutheran Hospital*, 51 F.3d 1308 (7th Cir. 1995), failed to take these salient facts into consideration in making its holding.

Contrary to petitioner's protestations, the Eighth Circuit's position is consistent with the intent of Congress and is clearly consistent with the statutory language. The continuation coverage provisions of the Employee Retirement Income Security Act of 1974, more specifically 29 U.S.C. § 1162(2)(D)(i) provides that COBRA coverage can be suspended on:

> The date on which the qualified beneficiary first becomes, after the date of the election —
>
> (i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion

> or limitation with respect to any preexisting condition of such beneficiary.

Under the plain terms of the statute, when a covered individual has other preexisting coverage, his COBRA coverage can be suspended on the day of election. This interpretation does not ignore the plain meaning of any of the statute's terms. Petitioner's interpretation, however, relies on the fallacy that because the statute points to the first date after the date of election to determine suspension of coverage, that coverage must necessarily originate after the election date. This is a complete non-sequitur. The statute only discusses when suspension can occur. It never defines when the other policy must initiate coverage.

Furthermore, if the plain terms of the statute mandate petitioner's interpretation, it is remarkable that four different circuits have ignored this mandate. *See National Companies*, *supra* at 1570. ("Thus, it is immaterial when the employee acquires other group health coverage; the only relevant question is when, after the election date, does the coverage take effect"); *Lutheran Hospital*, 51 F.3d at 1316 (J. Coffey, dissenting) ("There is nothing in the language of this statute to suggest that termination of the right to COBRA coverage cannot occur simultaneously with the triggering of the right to coverage, if a person continues comparable coverage under a pre-existing health plan.")

For all of the foregoing reasons, respondents respectfully state that the Eighth Circuit Court of Appeals properly decided the instant cause, and the Petition for Writ of Certiorari should be denied.

Moreover, the petitioner has urged the Court to accept this

case for review due to the admitted split of authority among the five circuits that have addressed this issue. Despite petitioner's protestations to the contrary, the issues involved in this case do not warrant review by this Court. The issue in question is extremely limited and narrow. It neither involves such an important question of federal law nor a question of broad ranging applicability that review should be granted. Further, any problems with the COBRA legislation are more properly the providence of Congress. In the fast changing area of health care legislation, Congress will have multiple opportunities to address the instant issue if it sees fit.

CONCLUSION

Certiorari is not warranted. For the reasons set for above, the respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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